

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	CASE NO. BK06-81701
)	BK06-81702
ASHA DISTRIBUTING, INC. and)	
ASHA DISTRIBUTING OF K.C., INC.,)	CH. 7
)	(Jointly Administered)
)	
Debtor(s).)	

ORDER

Hearing was held in Omaha, Nebraska, on March 5, 2007, regarding Filing No. 118, Emergency Motion to Reconsider Previous Order, or Alternatively, to Convert Case to Chapter 11, filed by the Official Committee of Unsecured Creditors, and Filing No. 133, Resistance, filed by ASHA Distributing, Inc. Joseph Badami appeared for the debtors; Richard Meyers appeared as Chapter 7 trustee; Robert Ginn and Patrick Turner appeared for the Official Committee of Unsecured Creditors; and Bruce White, Greg Casas and Shari Heyen appeared for Goodman Manufacturing Company.

This case was originally filed in October 2006 as a Chapter 11 case. Shortly after the filing, the court approved a sale of the assets of the business. The sale was closed and the debtor came into possession of the proceeds of the sale.

The case was filed apparently in response to the entry of a judgment against the debtor in the United States District Court for the Southern District of Texas in the amount of approximately \$3,000,000.

In the Chapter 11 case, there was an active Official Committee of Unsecured Creditors. That Committee has drafted a proposed Chapter 11 liquidating plan. The plan includes the appointment of a Chapter 11 trustee, in the person of a forensic accountant, who would be responsible for reviewing the books and records of the debtors in an attempt to determine whether avoidance actions should be filed against recipients of preferential payments and others. The plan was filed after counsel for the debtor informed counsel for the Committee that the debtor had decided to convert the case to Chapter 7. Shortly after the plan was filed, a motion to convert was filed by the debtor.

This court's administrative practice is to honor motions to convert to Chapter 7. Therefore, an order was entered on the day following the filing of the motion to convert. That order is an order for relief under Chapter 7.

The Committee has filed this motion to reconsider the order granting the conversion. Goodman Sales Company, the holder of the judgment referred to above, has joined in the motion to reconsider. The motion suggests that the entry of the order for relief under Chapter 7 was procedurally improper because all parties in interest had the right, under the Federal Rules of Bankruptcy Procedure and under the local rules, to notice and opportunity for hearing. Secondly, the motion asserts that even if the entry of the order for relief was procedurally proper, the case should be reconverted to Chapter 11 because the creditors and the Committee should be permitted

to control the case, particularly since all of the assets, but for the avoidance actions, have been liquidated.

Federal Rule of Bankruptcy Procedure 2002(a)(4) provides that the court shall give the debtor, the trustee, all creditors and indenture trustees at least 20 days' notice by mail of the hearing on the conversion of a case to another chapter. Rule 1017(f)(2) provides that conversion under § 1112(a) shall be on motion filed and served as required by Rule 9013. Local rules 9013-1 and 1017-1 are consistent with the above-cited rules.

IT IS ORDERED: The motion to reconsider (Fil. #118) is granted. Procedurally, the court should not have entered the order for relief under Chapter 7 until all parties in interest had been served with the motion and had an opportunity to resist. Therefore, the order for relief under Chapter 7 (Fil. #108) in Case No. BK06-81701, jointly administered with Case No. BK06-81702, is vacated.

DATED this 7th day of March, 2007.

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

Joseph Badami
Richard Meyers
*Robert Ginn
*Patrick Turner
Bruce White
Greg Casas
Shari Heyen
U.S. Trustee

*Movant is responsible for giving notice to other parties if required by rule or statute.